

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

JACOB ANDREW BERGERON,	:	PRISONER CIVIL RIGHTS
Plaintiff,	:	42 U.S.C. § 1983
	:	
v.	:	
	:	
UNKNOWN PUBLIC DEFENDER	:	CIVIL ACTION NO.
OF CHEROKEE COUNTY	:	1:17-CV-1948-TWT-LTW
NUMBER ONE (1) et al.,	:	
Defendants.	:	

**FINAL REPORT AND RECOMMENDATION**

Plaintiff is a pretrial detainee in the custody of Cherokee County authorities who is currently at the Georgia Regional Hospital of Atlanta. (Doc. 1.) Plaintiff, pro se, filed a complaint seeking relief under 42 U.S.C. § 1983 regarding the conditions of his confinement at the Cherokee County Jail and his representation by a public defender. (*Id.*) Plaintiff did not pay the filing and administrative fee.

Plaintiff cannot file a civil action without paying the filing and administrative fee because he has filed, while incarcerated, at least three civil actions and appeals that were dismissed as frivolous or for failure to state a claim upon which relief may be granted. *See Order, Bergeron v. Clark*, No. 1:10-cv-2498-TWT (N.D. Ga. Oct. 1, 2010) (dismissing case under 28 U.S.C. § 1915A as frivolous), *appeal dismissed as frivolous*, No. 10-15160-G (11th Cir. Mar. 21, 2011); *Order, Bergeron v. Miller*, No.

1:10-cv-1485-TWT (N.D. Ga. June 15, 2010) (dismissing case under 28 U.S.C. § 1915A for failure to state a claim upon which relief may be granted), *appeal dismissed as frivolous*, No. 10-13373-D (11th Cir. Dec. 30, 2010); Order, *Bergeron v. Copes*, No. 1:10-cv-295-TWT (N.D. Ga. Mar. 8, 2010) (dismissing case under 28 U.S.C. § 1915A for failure to state a claim upon which relief may be granted), *appeal dismissed as frivolous*, No. 10-13129-F (11th Cir. Nov. 24, 2010). A prisoner may not “bring a civil action” in federal court without paying the filing fee “if [he] has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g). Plaintiff’s complaint in this case is barred by § 1915(g).

When § 1915(g) bars an action, the proper procedure is to dismiss the case without prejudice to refile with the filing fee. *Dupree v. Palmer*, 284 F.3d 1234, 1236 (11th Cir. 2002). The fee cannot be paid after the case has been filed. *Id.* (“The prisoner cannot simply pay the filing fee after being denied *in forma pauperis* status. He must pay the filing fee at the time he *initiates* the suit.”).

Accordingly, the undersigned **RECOMMENDS** that this action be  
**DISMISSED WITHOUT PREJUDICE** under 28 U.S.C. § 1915(g).

**SO RECOMMENDED** this 5 day of June, 2017.

  
LINDA T. WALKER  
UNITED STATES MAGISTRATE JUDGE